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Right of peoples to self-determination

Use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly, in accordance with General Assembly resolution 53/135 of 9 December 1998, the report prepared by Mr. Enrique Bernales Ballesteros (Peru), Special Rapporteur on the question of the use of mercenaries.

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Report on the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, submitted by the Special Rapporteur of the Commission on Human Rights

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I. Introduction

1. During its fifty-third session, the General Assembly adopted resolution 53/135 of 9 December 1998 by which, *inter alia*, it decided to consider at its fifty-fourth session the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination. It requested the Special Rapporteur to report his findings on the question, with specific recommendations, to the General Assembly at its fifty-fourth session.

2. The General Assembly reaffirmed that the recruitment, use, financing and training of mercenaries are causes for grave concern to all States and violate the purposes and principles enshrined in the Charter of the United Nations. The General Assembly urged all States to take the necessary steps and to exercise the utmost vigilance against the menace posed by the activities of mercenaries and to take the necessary legislative measures to ensure that their territories and other territories under their control, as well as their nationals, are not used for the recruitment, assembly, financing, training and transit of mercenaries for the planning of activities designed to destabilize or overthrow the Government of any State, threaten the territorial integrity and political unity of sovereign States, promote secession or fight the national liberation movements struggling against colonial or other forms of alien domination or occupation. The Assembly invited States to investigate the possibility of mercenary involvement whenever criminal acts of a terrorist nature occur on their territories. It urged all States to cooperate fully with the Special Rapporteur in the fulfilment of his mandate and welcomed the cooperation extended by those countries that have invited the Special Rapporteur.

3. The General Assembly requested the Secretary-General to invite Governments to make proposals towards a clearer legal definition of mercenaries. It also requested the Office of the United Nations High Commissioner for Human Rights, as a matter of priority, to publicize the adverse effects of the activities of mercenaries on the right to self-determination and, when requested and where necessary, to render advisory services to States that are affected by the activities of mercenaries. The General Assembly welcomed the adoption by some States of national legislation that restricts the recruitment, assembly, financing, training and transit of mercenaries and called upon all States that have not yet done so to consider taking the necessary action to sign or to ratify the International Convention against the Recruitment, Use, Financing and Training of Mercenaries.

4. Similarly, the Commission on Human Rights, at its fifty-fifth session, adopted resolution 1999/3 in which it, *inter alia*, reiterated its condemnation of mercenary activities and recognized that armed conflicts, terrorism, arms trafficking and covert operations by third Powers encourage the demand for mercenaries on the global market.

5. Accordingly, and pursuant to the above-mentioned resolution 53/135, the Special Rapporteur has the honour to submit this report to the General Assembly for consideration at its fifty-fourth session.

II. Activities of the Special Rapporteur

A. Implementation of the programme of activities

6. The Special Rapporteur visited the United Kingdom of Great Britain and Northern Ireland from 25 to 30 January 1999, in response to an official invitation from the Government of that country. During his visit, he was able to meet with senior officials of the British Government, members of Parliament, eminent academics and experts and representatives of non-governmental organizations. An account of the visit is contained in section III of this report.

7. The Special Rapporteur submitted his report (E/CN.4/1999/11) to the Commission on Human Rights on 23 March 1999. While in Geneva, the Special Rapporteur held consultations with representatives of various States and met with members of non-governmental organizations. He also held coordination meetings with the Activities and Programmes Branch of the Office of the United Nations High Commissioner for Human Rights.

8. The Special Rapporteur had the opportunity to take part in an academic forum held on 12 March 1999 in Washington, D.C., on private security and military and security service companies in Africa. The forum was organized by the non-governmental organizations International Alert and Global Coalition for Africa and brought together academics and scholars in that field, military experts, lawyers, diplomats and members of non-governmental organizations working on the issue.

9. The Special Rapporteur returned to Geneva on two occasions, from 31 May to 3 June 1999 and from 16 to 20 August 1999, to hold various consultations, take part in the sixth meeting of special rapporteurs and special representatives, independent experts and chairmen of working groups of the Commission on Human Rights,

prepare for his September 1999 visit to Cuba at the invitation of the Cuban Government and draft this report.

B. Correspondence

10. Pursuant to General Assembly resolution 53/135 and Commission on Human Rights resolution 1999/3, the Special Rapporteur sent a communication on 15 July 1999 to all States Members of the Organization, requesting the following:

(a) Information on the possible existence of any recent mercenary activities (recruitment, financing, training, assembly, transit or use of mercenaries);

(b) Information available to their Government on participation by nationals of their country as mercenaries in committing acts against the sovereignty of other States, against the exercise of the right of other peoples to self-determination and in human rights violations;

(c) Information on the possible existence of mercenary activities in the territory of another State from which actions are carried out that affect or potentially affect the sovereignty of their country, the exercise of the right of their people to self-determination and its enjoyment of human rights;

(d) Information on the participation of mercenaries in committing internationally wrongful acts such as terrorist attacks, forming and supporting death squads and paramilitary organizations, trafficking in and abduction of persons, drug trafficking, the arms traffic and contraband;

(e) Information on domestic legislation currently in force and on international treaties to which their country is a party, outlawing mercenary activities and the use of mercenaries, together with observations on their Government's position regarding the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, adopted by the General Assembly on 4 December 1989;

(f) Suggestions which, in their Government's view, might be of use in enhancing the international treatment of the topic of prohibiting the use of mercenaries;

(g) Information and views on international security service and military advice and training companies offering their services to Governments, in order to intervene in internal armed conflicts with the assistance of mercenarized military professionals for the purpose of improving the military effectiveness of government forces, in exchange for cash benefits and shares in the investments and economic ventures of the country in which they operate.

11. In response to an earlier request for information sent by the Special Rapporteur on 6 July 1998, the Government of Costa Rica sent the following communication to the Special Rapporteur by means of a note verbale dated 26 January 1999:

> "(a) The Intelligence and National Security Department (DIS) has no record or knowledge of mercenary activities in Costa Rica in the full sense of the word. A mercenary is a soldier who provides services, generally military services, to a foreign Government in exchange for money. Thus defined, mercenary activities are, without exception, incompatible with our system of government and with the legal system in force and therefore impracticable.
>
> "With regard to the commission of internationally wrongful acts, mention could be made, although they do not constitute mercenary activities, of the actions of *sicarios* or hired killers who have committed murders in Costa Rica related to drug trafficking. Such murders have been linked to Colombian, Venezuelan and Panamanian citizens (see (h) below).
>
> "The abductions of European citizens by former Nicaraguan *contra* soldiers in northern Costa Rica in January and August 1996, which did not involve the participation of Costa Ricans and were intended to elicit ransom money, could also be said to bear some similarity to mercenary activities.
>
> "(b) The Government has no information on participation by Costa Rican nationals as mercenaries in committing acts against the sovereignty of other States, nor on mercenary activities in the territory of another State that potentially affect the sovereignty of Costa Rica.
>
> "The emergence of an alleged subversive group calling itself the *Brazo Armado del Pueblo*, whose leader, Costa Rican Alvaro Sequeira Ramírez, in circumstances that are far from clear, recruited several Nicaraguans to abduct two Costa Rican businessmen for ransom and subsequently to raid a bank in Puerto Viejo de Sarapiquí, may be the closest thing to mercenary activity to have happened in Costa Rica, in that it involved a Costa Rican 'recruiting' foreigners to carry out wrongful acts. Even so, the acts in question are far from being mercenary activities in the true sense of the word.

"(c) No activities of this kind have been reported.

"(d) The Government has no information on such participation.

"(e) The Legislative Assembly is in the process of adopting the International Convention against the Recruitment, Use, Financing and Training of Mercenaries. There is no domestic legislation currently in force outlawing mercenary activities.

"(f) (...)

"(g) The Intelligence and National Security Department has no information on international security service companies. The Ministry of Public Security is responsible for keeping records of legal entities offering private security services, but only those operating nationally and providing security services for private citizens.

"Costa Rica's democracy and rule of law are incompatible with the conduct of mercenary activities. Moreover, as a country which respects the norms of international law, Costa Rica condemns internationally wrongful acts such as terrorism in all its forms, death squads, abduction for ransom, hostage-taking, paramilitary groups, trafficking in illegal aliens, drugs or arms and any other activity which undermines individual human freedoms.

"(h) With regard to the alleged presence of *sicarios* or hired killers, the presence of such individuals in Costa Rica became known in April 1997, when two Asians and a Costa Rican were killed in cold blood in the casino of the Presidente Hotel in San José. The police blamed the murders on two Asians identified as Teddy Wong and Taeko Hong, who allegedly fled to Panama after the killings and whose whereabouts are currently unknown. Another Asian, Chun Fat Lane Chang, known as Michael Cheng, to whom one of the murdered Asians owed a gambling debt, was identified as the person behind the killings.

"In September 1997, the Judicial Investigation Agency (OIJ) linked Colombians Luis Eduardo González Pineda, alias 'Hammer', and Hernán Cano Alvarez, Venezuelan Fleider Duarte Moreno and Panamanian Humberto Morales Alfaro to two drug trafficking-related crimes attributed to *sicarios*: Nicaraguan Froylan Palma Rojas, a guard at a private banking firm in Moravia canton, was murdered on 30 April 1997, and Costa Rican Marvin Clarke González was murdered on 28 May 1997 in his bar, 'Tobby's', in Cinco Esquinas, San José. The latter victim had close ties to Jeanette Loría Leitón, alias 'La Macha', who was arrested on 27 February 1997, along with former parliamentary deputy Leonel Villalobos Salazar, for her alleged ties to drug trafficking.

"It should be mentioned that González Pineda, Cano Alvarez, Vicente Duarte and Morales Alfaro were part of a gang of bank robbers who on 30 May 1997, using a vigilance not usually seen in Costa Rica, raided the Moravia branch of the National Bank of Costa Rica. Panamanian Fernando Castillo Quirós was also a member of this gang. Some OIJ officials considered the foreigners in the gang to be *sicarios* who would kill for any sum of money.

"The leader of the gang, González Pineda, had entered the country illegally in April 1997 under his brother Henry's name, having allegedly been recruited for the sole purpose of killing three Costa Ricans who had drug-related debts.

"González Pineda had apparently been sentenced in Colombia to 17 years' imprisonment for homicide, in addition to being implicated in a further 13 crimes. Judicial proceedings had also been instituted against him in Panama for three crimes, while in Costa Rica he had been linked to three other killings in cold blood. The Costa Rican authorities also considered him to be the leader of a gang of South Americans, Panamanians and Costa Ricans alleged to have carried out various attacks in Colombia, Panama and Costa Rica.

"Panamanian Fernando Castillo Quirós, for his part, had apparently been sentenced in Chiriquí, Panama, to several years in prison for having belonged to a 'terrorist' group, made up of members of the Panamanian Defence Forces, which had plotted to assassinate the former President of Panama, Guillermo Endara Gallimany, using an explosive device, on 23 April 1993, the day before a meeting of the Partido Arnulfista in Boquete de Chiriquí. However, when the attack occurred, Castillo was no longer a member of the Panamanian Defence Forces.

"In October 1997, OIJ established that a number of *sicarios* were planning to wreak havoc in the country, for instance, by attacking an armoured truck carrying money from the south of the country to San José and buying heavy weaponry such as machine guns, bazookas and rocket launchers to send to Colombia to the guerrilla group to which they

belonged. On that occasion, OIJ classified Colombians Luis Eduardo González Pineda and Hernán Cano Alvarez and Panamanian Fernando Castillo Quirós as *sicarios*.

"In March 1998, the police blamed the 13 March 1998 murder of merchant Iván Solano Bonilla in Concepción Arriba de Alajuelita, San José, on two alleged *sicarios*, one of them a Colombian. The victim had died from a shot to the right temple, the apparent motive being revenge for a money debt.

"The most recent crime attributed to a *sicario* was a shooting in a house in the Los Corales district of Limón on 4 June 1998. Elsy Barrientos Blanco, the wife of Carlos Ramírez Suárez, an officer with the Limón tax police, was killed and her husband was seriously wounded. The main suspect was a former policeman, Oscar Tom Reyes, ID No. 8-066-574, who was alleged to be operating as a hired killer for a group of Colombians living in Limón. It has emerged that between January and July 1998, at least 10 people were 'executed' in Limón, some of them in the city centre, by foreign gunmen — or *sicarios* from Colombia and Jamaica.

"It has been established that the *sicario* business is run by Colombians and Jamaicans while the drug trade is operated by Colombians, Panamanians and Costa Ricans."

12. The Special Rapporteur thanks the Government of Costa Rica for the note verbale and comments reproduced above, which demonstrate the growing scale of organized crime, to the detriment of public security. With regard to the employment of *sicarios* for criminal activities, he is studying this offence, which consists of obtaining hired killers, from any country, to carry out criminal acts. The *sicario* is usually classified as a criminal in respect of the perpetration of common crimes. However, certain types of crimes, such as arms trafficking, drug trafficking or terrorist acts carried out in the context of extremist ideologies, armed conflicts or for the purposes of political interference in the affairs of a country, may involve that same *sicario* alongside mercenaries.

13. By a letter dated 3 March 1999, Mr. Amiran Kavadze, Permanent Representative of Georgia to the United Nations Office at Geneva, transmitted his Government's response to the questionnaire sent out by the Special Rapporteur on 6 July 1998. This communication reads as follows:

"This issue of violations of human rights by mercenaries is of actual importance for Georgia because practically all military actions carried out by Abkhaz separatists against the Georgian central Government have been implemented by foreign mercenaries.

"We hope that the information provided will be duly reflected in one of your reports.

"(a) The main part of the Abkhaz military forces in the Georgian-Abkhaz conflict zone are mercenaries, namely, citizens of the Russian Federation. Apart from this, the troops of Abkhaz separatists were supported by approximately 200 Turkish, Syrian and Jordanian mercenaries. The special group 'Dolphin' consisting of only foreign mercenaries was operating in the conflict zone. In violation of the 'Cease-Fire' Agreement of 13 July 1993 (Sochi, Russia) certain groups of Kazakh troops of the 1st Kubanski battalion, mixed regiment and military troops of the so-called Confederation of Caucasian People, terrorists, killers and other criminals from Russia harbored by Abkhaz separatists were operating in the Georgian-Abkhaz military conflict. All these troops were headed by a Russian citizen, colonel in the land forces of Russia. All these persons were paid by several Russian funds and have been acting as mercenaries. Military operations directed against Georgia were headed by Russian officers. The Russian Federation has many times increased control over the Psou (Georgian-Russian border checkpoint), however, the illegal infiltration of mercenaries into the territory of Georgia was continuing from the north Caucasian and other Russian territories.

"One hundred and fifty mercenaries having Russian citizenship were training the Abkhaz troops in Sukhumi. The same activities were conducted by the group consisting of 80 Adygeis (Russian citizens) in the resort Gantiadi (Gagra district). The so-called National Russian Legion was in charge of hiring and bringing in the mercenaries into the territory of Georgia.

"(b) Georgia does not possess any official or unofficial information on participation of Georgian nationals as mercenaries in committing acts against the sovereignty of other States, against the exercise of the right of other peoples to self-determination and in human rights violations.

"(c) There exists an organization in the Russian Federation called 'Confederation of Caucasian People', the representatives of which have been acting against the territorial integrity and sovereignty of Georgia. The activities of these illegal military troops in the Georgian-Abkhaz conflict zone threaten not only Georgia but also the security of the whole region.

"(d) The special group 'Dolphin' carries out diversion and terrorist actions in the conflict zone. The 12 military actions have been conducted by this group. As a result, one military aircraft was damaged, a radio station and bridges were exploded and 10 peaceful civilians of Georgian citizenship were killed.

"Military forces of foreign mercenaries have played the decisive role in genocide during the events in Gali (Georgia) of 20-26 May 1998. These forces were brought into the territory of Georgia from Russia by two planes using 'Bombora' airport (Gudauta). Approximately one hundred foreign mercenaries were brought into the territory of the Gali region by Abkhaz separatists, who were directly involved in the ethnic clearance of Georgian people. The International Association of Cherkezia coordinates the provision of Abkhaz separatists with military armament and ammunition.

"(e) Article 66 of the Criminal Code in force provides for calling to account for mercenary activities in military actions or conflicts. Such measures are also provided for by the Draft Criminal Code of Georgia in accordance with the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, adopted by the General Assembly on 4 December 1989.

Georgia is a member of the above-mentioned Convention since 3 May 1995.

"(f) The Government of Georgia believes that it will be useful to convene an international conference that will focus on practical solution of these problems.

"(g) Georgia possesses the information that there are two training camps for mercenaries on the territory of the Georgian-Abkhaz conflict zone, where the training is conducted by Russian professional military instructors."

14. The Special Rapporteur has followed up this communication from the Government of Georgia, which denounces mercenary activities directed against it, with a view to determining the responsibility of third States which might have encouraged the intervention of mercenary forces against Georgia.

15. Mr. Ramón E. González Giner, at that time Minister for Foreign Affairs of El Salvador, sent the following letter to the Special Rapporteur on 20 November 1998.

"I have the honour to inform you, in your capacity as Special Rapporteur on the question of the use of mercenaries, that in its international relations, El Salvador has adopted a number of ethical and legal principles, in the belief that they represent the essential frame of reference for ensuring peace, respect and cooperation among nations. These principles are also in line with the national interest because of the recent history of our country, which was faced with an armed conflict which was conducive to the participation of foreigners, acting on their own behalf, who became associated with irregular groups involved in arms trafficking, sabotage, acts of terrorism, and other related crimes.

"For this reason, the Government of El Salvador believes that mercenary activities, which in the long run undermines the effective enjoyment of human rights, the stability of Governments and the economic development of peoples, are threats to international peace and security.

"El Salvador, as a sovereign State which recognizes the individual as the origin and goal of State activity, is under an obligation to ensure for its inhabitants the enjoyment of liberty, health, culture, economic well-being and social justice, through respect for and the promotion of fundamental constitutional principles such as freedom of association for legitimate and peaceful purposes and the consequent prohibition of the existence of armed groups with political, religious or trade union affiliation.

"Our country has taken the responsibility of assuming various international commitments in the judicial sphere, in respect of human rights, combating drug trafficking, and regional security, among others. It is important to note that it was precisely within the framework of the regional peace process, known as Esquipulas II, that the Central American Presidents reiterated their commitment to prevent the use of their own territories by persons, organizations or groups seeking to destabilize other States and to refuse to

provide them with or allow them to receive military and logistical support. These commitments have been faithfully honoured and supplemented in various regional agreements and instruments, such as the Framework Treaty on Democratic Security in Central America, signed on 15 December 1995.

"The Government of El Salvador has sponsored and supported various resolutions on the subject adopted by the United Nations General Assembly and the Commission on Human Rights, including General Assembly resolution 52/112, of 12 December 1997, entitled 'Use of mercenaries as a means of violating human rights and impeding the exercise of the rights of peoples to self-determination'.

"The Government of El Salvador has received information through the international press of alleged illicit activities carried out against the Republic of Cuba involving actions in a private capacity by Salvadoran citizens Raúl Ernesto Cruz León and Otto René Rodríguez Llerena, and their imprisonment by the Cuban authorities because of their participation in committing acts which were deemed to be mercenary. It refers explicitly to the document 'Report of the Special Rapporteur on the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination' in relation to this case.

"In this respect, the Salvadoran Government wishes to affirm to the Special Rapporteur its opposition to illicit mercenary activities and other related criminal activities, and at the same time to request him to transmit to it information and the results of any investigation he may undertake concerning the situation of these two Salvadoran citizens mentioned in connection with participation in internationally wrongful acts."

16. With regard to this communication from the Government of El Salvador, for which he expresses appreciation, the Special Rapporteur notes that in the context of his visit to Cuba, he will learn more about the Cuban Government's charges concerning mercenary activities against its country, including terrorist attacks carried out by the two Salvadoran agents who have allegedly admitted to their status as mercenaries in the criminal acts which they carried out.

17. During the reporting period, the Special Rapporteur continued to receive the cooperation of various non-governmental organizations, including, in particular, Amnesty International of the United Kingdom, Human Rights Watch and International Alert. He also received communications from the Bahrain Human Rights Organization, in Copenhagen; the Mattahida Quami Movement (MQM), in the United Kingdom; the Royal Institute of International Affairs, in London; and the Organization for Defending Victims of Violence, in Tehran. The Special Rapporteur expresses appreciation for the cooperation of these non-governmental organizations in the fulfilment of his mandate.

C. Correspondence regarding reports of mercenary activities in Colombia

18. In view of the reports received concerning the existence of mercenary activities in Colombia, on 18 November 1998 the Special Rapporteur sent the following communication to the Permanent Representative of Colombia to the United Nations Office at Geneva:

"For several months the Office of the Special Rapporteur, which I head, has been receiving information referring to the existence of mercenary activities which are allegedly affecting the enjoyment of human rights by Colombian workers and peasants.

"According to the information received, the mercenaries and their sophisticated military equipment are allegedly supplied by Defence Systems Limited, a private company which provides security services internationally, through a Colombian subsidiary, Defence Systems Colombia (DSC).

"This company is alleged to operate under contract with the oil company British Petroleum to take care of its installations and, in particular, a branch of the pipeline which is being built in an area which is subject to many attacks by Ejército de Liberación Nacional (ELN) guerrillas. The information received also indicates that British Petroleum and other associates have signed agreements with army and national police units whereby, in exchange for special fees and the supply of equipment, those units provide private security for their installations, following refresher training which is allegedly carried out by mercenaries.

"The forces which have been provided or trained by DSC are alleged to have committed acts in violation of human rights. Places such as Casanare, Arauca, Tauramena and Segovia are alleged to have been the scene of crimes committed with the assistance of mercenaries, who are also believed to have devised

and carried out acts of intimidation, including torture, to force the local inhabitants to ally themselves with them and provide information to them about the guerrilla forces.

"The information which I have received originates from well-regarded non-governmental organizations, documentation in the public domain, and the analysis and commentaries of the international press. As Special Rapporteur I am required to transmit this information and documentation, as a possible case of mercenary activities in Colombia carried out through private companies which provide security services internationally, for which purpose they hire high-level professionals who, once engaged as mercenaries with high salaries, do not hesitate to violate human rights in the name of 'efficiency'.

"In this context, and before including in my next reports to the Commission on Human Rights and the General Assembly a 'new case' of mercenary activities, I felt it essential to send this communication to your Government, in order to, first, transmit to it the information and the requests from non-governmental organizations that I should take up the question of alleged mercenary activities in Colombia; second, request it to provide the fullest possible information on the presence and legal framework of Defence Systems Ltd., and its subsidiary, Defence Systems Colombia (DSC) and, in general, any other private international company providing security services and military assistance which may be operating in Colombia; and, lastly, request it also to provide information about the legal situation of the foreign personnel of these security companies who are allegedly operating as mercenaries, and their links with the perpetration of crimes, attacks, sabotage and any other type of illicit activities.

"In requesting this information, I am fulfilling my mandate, which requires me, as Special Rapporteur of the Commission on Human Rights on the question of the use of mercenaries, to investigate all types of reports regarding these activities, which have been condemned by the United Nations, and to invite all Member States of the Organization to adopt clear measures for the prohibition and punishment of all such activities."

19. In a letter dated 28 December 1998 signed by Ms. Graciela Uribe de Lozano, Director for Special Questions of the Ministry of Foreign Affairs, the Government of Colombia responded to the communication from the Special Rapporteur reproduced in the preceding paragraph. This letter reads as follows:

"I have the honour, on behalf of the Government of Colombia, to refer to your communication dated 18 November 1998 concerning information referring to the existence of mercenary activities which are allegedly affecting the enjoyment of human rights by Colombian workers and peasants.

"The Ministry of Foreign Affairs, after receiving this request from the Special Rapporteur, transmitted it, for follow-up, to the President of the Colombian oil company Ecopetrol.

"We have received a reply from Ecopetrol pointing out that the oil fields in Casanare, because of their size and the high quality of the oil reserves there, are of vital importance for the national economy.

"First, Ecopetrol indicates that it does not have information that would confirm the reports referred to in the Special Rapporteur's communication regarding the activities of DSC. DSC does provide security advice to BP Exploration Colombia Company, the operator of the Cusiana and Cupiagua oil fields in the Casnare department, which has signed a contract of association with Ecopetrol. It is legally constituted in Colombia and has received permission to operate from the Office of the Superintendent of Private Monitoring and Security Services, the body which is responsible for monitoring the activities of DSC and all the companies which provide security services in Colombia.

"It is important to note that in January 1998, at the request of BP Exploration Colombia Company, the Public Prosecutor's Office of Colombia completed a 14-month preliminary investigation of the accusations that BP Exploration Colombia Company was involved in human rights violations. In that investigation the Office found no grounds for opening a formal investigation.

"Furthermore, with regard to the cooperation agreements signed between BP and other companies associated with Ecopetrol and the Ministry of Defence, these originated as a result of the threats, attacks, extortion and kidnapping of Ecopetrol officials by subversive elements which had declared the oil infrastructure, including that of Ecopetrol, to be a military objective. This situation led to a state of such vulnerability that the oil companies, including Ecopetrol, were forced to turn to the Colombian army

and the police for armed protection, in accordance with the Colombian Constitution.

"In order to facilitate the performance of the task of the army and the police, the oil companies provide support designed solely to increase the well-being of the personnel providing that protection; it is, in no cases, lethal in nature; assistance is also provided to the military with helicopter transport in order to prevent ambushes and hand grenade attacks during its movements by land and to facilitate those movements over the great areas of land it has to protect. This support is legalized through inter-agency cooperation agreements signed between the associates and/or Ecopetrol and the Ministry of Defence.

"I hope that the foregoing information will help to clarify the situation regarding the Colombian oil industry. Although the atmosphere in which Ecopetrol and its associates carry out their activities is particularly difficult compared with other parts of the world, Ecopetrol is concerned about the fulfilment of Colombian law and about human rights, which are now, in a timely manner, being advanced by international bodies, while, to the extent of its ability, promoting better living conditions for the Colombian people.

"The Government of Colombia once again expresses its determination to ensure the exercise of human rights, and takes this opportunity to convey to you the assurances of its highest consideration."

20. The Special Rapporteur thanks the Government of Colombia for its valuable cooperation. Its communication throws a great deal of light on the situation of violence affecting this country, and on the Colombian Government's concern to ensure the exercise of human rights. From the same perspective, the Special Rapporteur is preparing a second communication to the Government of Colombia to request further information and details on the nature and scope of the activities carried out by DSC, since this point was not sufficiently clarified in the reply and there was no rebuttal of the information indicating that the company has taken on functions of public order, security and territorial protection, which under the legal system of Colombia are the exclusive responsibility of the police and the armed forces.

III. Visit to the United Kingdom of Great Britain and Northern Ireland

21. The Special Rapporteur visited the United Kingdom of Great Britain and Northern Ireland from 25 to 30 January 1999, in response to an official invitation from the Government of that country. He was accompanied by Mr. Miguel de la Lama, Mr. Andrés Brookes and Mr. Peter Grimsditch. His visit was prepared *in situ* by Mr. Ahmad Fawzi, director of the United Nations Information Centre in London; the Special Rapporteur expresses appreciation to Mr. Fawzi for his efficient cooperation in the preparation and conduct of the visit. The meetings which the Special Rapporteur had with Mr. Tony Lloyd, Minister of State for Foreign and Commonwealth Affairs, and with senior officials of his Office, were of particular interest.

22. During the meeting with officials of the Department for International Development, the officials indicated to the Special Rapporteur that increasing attention was being paid to security issues. This seemed increasingly necessary in the context of the primary objective of promoting human development internationally and eliminating poverty. The promotion of awareness of the importance of respecting human rights in the armed and police forces of many countries was a basic pillar in any programme for development and the promotion of democracy and the rule of law. To that end the Department for International Development, along with the Foreign and Commonwealth Office and the Ministry of Defence, were participating in training programmes in human rights and international humanitarian law. In the view of officials of the Department, it was clear that democratic armed and police forces would reduce the number of human rights violations and help lessen the severity of conflicts. It would thus be less and less necessary to resort to security services provided by private companies and, as a result, the risk that these companies would include mercenaries would be reduced.

23. Officials of the Foreign and Commonwealth Office said that the Special Rapporteur should distinguish clearly between private companies of a military nature which participated in combat and recruited mercenaries to fight, which were unusual, and the more common private security companies. Even the United Kingdom Government sometimes used the latter companies to provide protection services for its diplomatic premises abroad. There was nothing illegal or illicit in that. There were even private companies which provided military support services to governments, and those activities were perfectly legal and sometimes very useful. The advice or military training

provided by private entities was not illegal or illicit. What would be illegal or illicit, however, would be direct intervention in an armed conflict as a combatant.

24. In principle, the Special Rapporteur shares the interpretation by government officials described in the previous paragraph. In practice, however, the line separating legal from illegal activities is fairly thin. For example, the Special Rapporteur knows of the case of arms manufacturers which, in order to sell their products to parties in conflict, do not hesitate to send instructors in the use of the weapons who sometimes end up participating in the battlefield. These companies should be subject to clear legal regulation and should always be under the control of governments. There are other companies which are established for the exclusive purpose of participating in armed conflicts.

25. Another argument put forward several times by the United Kingdom officials was that military security companies which recruit mercenaries exist because there is a demand for their services on the part of governments faced with armed opposition groups or on the part of other groups which are involved in armed conflicts. The argument is valid. It is also true, however, that there is a possibility that it is those same companies which create or encourage that demand.

26. Officials of the Foreign and Commonwealth Office said that both the problem of private military security companies and that of mercenaries had to be dealt with through local legislation and through international norms. In both cases, there was a serious initial problem: that of defining what is meant by a private military security company and what is meant by a mercenary. There is no generally acceptable and operational definition of the concept of mercenarism. The definitions contained in Protocol I Additional to the Geneva Conventions and the International Convention against the Recruitment, Use, Financing and Training of Mercenaries were not applicable in the United Kingdom legal system since it was very difficult to verify the various accumulated requirements for proving that someone was a mercenary. The legal system of the United Kingdom penalized actual conduct, not the status of a person or his alleged intention to commit a crime. It was therefore inadmissible to try to prove to a court in the United Kingdom that someone was a mercenary or that his main objective in committing a crime was financial gain. Furthermore, the common law system contained a number of guarantees for the accused and any individual was innocent until proven guilty. The elements laid down in the International Convention were very difficult to prove or were inadmissible under the legal system of the United Kingdom.

27. That led the United Kingdom Government to believe that the International Convention would be very difficult to apply in the United Kingdom courts so that in principle there would be no advantage in acceding to it. The Special Rapporteur believes that although the definition of a mercenary contained in the International Convention can be improved, it would first have to be ensured that the Convention enters into force and then, among the parties, seek its improvement. The worst situation is the current situation, in which, in most of the world, both mercenaries and the companies that recruit them enjoy impunity.

28. In the course of the Special Rapporteur's meeting with members of the Foreign Affairs Committee of the House of Commons, the problem of the demand for private military security companies was also raised. The case of Sierra Leone and of the violation of the embargo imposed by the United Nations Security Council was discussed. Reference was made to the terrible massacres and mutilations of civilians attributed to the rebels and to the duty of the Government of that country to guarantee their protection. Forces of the Economic Community of West African States (ECOWAS) Monitoring Group (ECOMOG) had been called in, but they consisted mainly of Nigerian troops. Nigeria, in turn, was the object of an embargo imposed by Western countries which depleted the supply of weapons and ammunition for its troops. It was also known that some officials had not been paid for several months. Those circumstances could explain the Government's recourse to the services of a military security company.

29. The Special Rapporteur explained that he believed that any use of those companies was a short-term solution. The problems of Sierra Leone remained, or were worsening. Instead, there should be a strengthening of the regional security mechanisms, especially in Africa, which acted in respect for the norms of international humanitarian law and human rights. There was a great difference in terms of responsibility for action in each case. While the regional peacekeeping forces had clear norms which they had to respect and a clear line of command, that transparency was not found in military security companies, and responsibility was difficult to determine. Nor was it easy to determine what the relationship was between those companies and the government concerned.

30. During the meetings with government officials, the question of the relationship between the question of mercenaries and the arms trade was also raised. The officials affirmed that the arms trade was reasonably well regulated in the United Kingdom. However, the regulations did not cover exports from a third country. That had been the case with the alleged shipment of arms to Sierra Leone by

Sandline International from Bulgaria. The United Kingdom Government was interested in supporting better regulation of the small arms trade and a draft code of conduct drawn up within the framework of the European Union.

31. During the meetings that were held the condemnation of the activities of mercenaries by officials of the United Kingdom Government emerged clearly, as did their concern about what they described as a growing and increasingly complex phenomenon, which could affect the peace, independence and prosperity of various countries, mainly in Africa. The activities of mercenaries also gave rise to incorrect assumptions about their links with the Government, which could affect the country's international image. In view of that phenomenon the United Kingdom Government felt that it was a matter of priority to support the efforts of African countries to find a peaceful solution to armed conflicts on the continent. The political, technical and financial support provided to the ECOMOG forces fell within that context.

32. The United Kingdom Government also drew particular attention to the activities of the military security companies registered in its territory. If they carried out any activities that were illegal under United Kingdom law or international law, the prosecutors would bring appropriate charges before the courts. With regard to mercenaries, they could not be prosecuted unless they had committed a specific crime which could be proved; it was not sufficient to be considered or classified as a mercenary to be prosecuted. In other words, there is no crime in being a mercenary, only the possibility that a crime might be committed by a mercenary. What mattered was the act, not the status of the person carrying out the act. There was no question of condemning mercenaries per se, but of prosecuting and punishing them when they committed crimes.

33. The United Kingdom Government is also seriously studying the issue of the employment of mercenaries in general and of security companies and military assistance in particular. The Government has modified the criteria and legal requirements for the export of arms to prevent the export, along with arms, of destabilization. Work is being carried out at the national level, and also at the European and international levels, within the United Nations. Particular attention is being paid to establishing the legal and administrative conditions to allow embargoes imposed by the United Nations to be respected and carried out in an appropriate manner.

34. The meetings with non-governmental organizations based in the United Kingdom and with academic bodies were equally productive. Particular attention was paid to the subject of companies providing security services, military assistance and advice, and their presence in Africa. Many speakers said that that presence was due to necessity or to demand created by the widespread lack of security in Africa. Individuals, entrepreneurs, foreign diplomats and even officials of humanitarian agencies often live in a permanent state of insecurity, which is aggravated in cases of armed conflicts. The international community is no longer heeding requests for protection originating from Africa and that explains the presence of these companies. At the same time there is the boom in mining and oil development in Africa since the 1980s.

35. The vacuum in the regulation of these companies, both in the countries in which they operate and in those in which they are registered, was also analysed, particularly in the case of the United Kingdom, as well as the consequences of that regulatory void for the proliferation of human rights violations.

36. Other matters considered were the export of security equipment and light weapons, the need to establish stricter licensing and registration systems and to devise follow-up and monitoring mechanisms once export has taken place, and the involvement of mercenaries at different stages of these processes.

37. Reference was also made to the leadership of the United Kingdom Government in elaborating norms at the European level to control international arms trafficking, and to the Code of Conduct adopted by the European Union in 1998.

IV. Mercenary activities in Africa

38. There has been little change in the situation of the African countries suffering from political instability, economic problems and armed conflicts which the Special Rapporteur has kept under review because of the presence of mercenaries. It is well known that, from the outset, this mandate has been linked to the palpable deterioration of the situation in some African countries where mercenary forces have offered themselves for hire by one of the parties in conflict in order to reap monetary gain in exchange for committing acts of lethal violence. This mercenary presence is an established fact in a number of African conflicts and is linked to violence and to a lack of guarantees that would enable populations to live in peace.

39. While the Special Rapporteur has pointed out in previous reports that the mercenary phenomenon is not exclusive to African countries, Africa is the continent where

the phenomenon is most persistent and most seriously damaging. Chronic political instability and the existence of valuable natural resources, which outsiders seek to control by encouraging and arming allies within the country to enable them to take power, are at the root of many African armed conflicts, in which mercenaries sooner or later become involved. This pattern is not a thing of the past; unfortunately, it can still be observed today.

40. In Sierra Leone, the legitimate Government of President Ahmed Tejan Kabbah signed a peace agreement in Lomé with Foday Sankoh's Revolutionary United Front (RUF) on 7 July 1999. The agreement officially ended eight years of civil war, but it really represents a power-sharing deal that provides for an amnesty that literally guarantees impunity for the perpetrators of serious violations of human rights and of international humanitarian law. The group that usurped power and spread terror, with the help of mercenaries, will jointly govern the country; four ministers and three deputy ministers will be chosen from its ranks; and the gold and diamonds on which Sierra Leone's economy is based will be placed under its control. The agreement says nothing about the international security companies which took part in the conflict and through which the mercenary element was introduced. In any case, the agreement, which has more to do with politics than with peace and justice, is no guarantee of durability. The Sierra Leone tragedy demonstrates once again the fallaciousness of the argument that private military security companies help to guarantee the governability of the countries in which they are active.

41. The situation in the Republic of the Congo has steadily worsened after two years of armed conflicts. Civilian resistance has been harshly put down by the Government of President Denis Sassou Nguesso, to the point where the situation has given rise to reports of ethnic extermination in South Brazzaville, South Congo and the Pool region. At this writing, fighting continues in Pool, Brazzaville, Niari, Bouenza and Lékoumou. The Association of Congolese Intellectuals from Pool and South Congo (Collectif d'intellectuels congolais originaires du Pool et du Sud-Congo) has reported extermination practices against the Kongo ethnic group, claiming that 10,000 people have been killed. The presence of Angolan, Chadian and French mercenaries alongside government troops has also been reported, as has the presence of mercenaries in the opposition forces, including the Ninjas, Zulus, Mambas and Cocoyes. According to the reports, a major European Power is behind the conflict, for reasons concerning its interest in controlling Congolese petroleum. In any case, the objective situation is that the armed conflict continues and that massive human rights violations have taken place, forcing 10,000 people to move to new locations within the country and over 2,000 people to seek refuge in Gabon.

42. In the Democratic Republic of the Congo, despite several attempts to negotiate peace and despite the ceasefire agreement concluded on 10 July 1999, the armed conflict continues in various parts of the country. Armies opposing the Government of President Laurent Kabila, such as the Congolese Rally for Democracy (RCD) and the Movement for the Liberation of Congo (MLC), are supported by forces from Rwanda and Uganda, while the Government's armed forces are supported by troops from Angola, Namibia and Zimbabwe. In this connection, it has been reported that mercenary combatants are present on all fronts and in the forces of all the parties. The mercenaries' primary interest seems to be the Mbuji-Mayi region, which is the diamond capital of East Kasai. The presence of the international security company Defence Systems Limited has also been reported; this company is said to be working with mercenaries to protect mining and petroleum facilities.

43. Lastly, the Special Rapporteur wishes to refer to the worsening of the situation in Angola, where it appears that the União Nacional para a Independência Total de Angola (UNITA) has stopped complying with the peace agreements it signed in 1991 and has unilaterally resumed armed hostilities against the Government. The reason for this rebellion appears to be the unwillingness of Mr. Jonas Savimbi, the leader of UNITA, to surrender his weapons and withdraw from the territories under UNITA control. It is estimated that such control has enabled UNITA to generate revenues of some $3 billion to $4 billion through the diamond trade. It seems that some major Western firms also benefited from those transactions.

44. Despite the embargo imposed by the United Nations, weapons continue to reach UNITA by various alternative routes used illegally by the latter. Other sources state that UNITA continues not only to acquire modern, sophisticated weapons, but also to hire European mercenaries, some of whom are Ukrainian, to strengthen its military capacity, as shown by the recent attacks on Huambo and Malange. In sum, the arms embargo is not working and peace has once again been shattered in Angola by the unilateral violent actions of this armed organization. UNITA continues to recruit mercenaries and to buy weapons with its income from the illegal sale of diamonds.

V. Persistence and evolution of mercenary activities

45. It has been argued that mercenary activities are a marginal phenomenon of limited scope and that they do not merit the General Assembly's constant concern about stopping them. Another opinion is that such activities have no larger impact on the exercise of the right of peoples to self-determination or on the protection of human rights. This viewpoint, though perfectly respectable, does not take into account the complex nature of mercenary acts or the dire consequences of tolerating such activities. Mercenaries often perpetrate attacks and acts of sabotage, terror, torture, etc. All of these acts are considered to be serious violations of human rights in international treaties on the subject. However, such violations are much more serious when they are committed by mercenaries because mercenarism is at the root of the violations themselves and serves the interests of State policies of interference in the affairs of other States, corrupt Governments that hire mercenaries to impose an illegitimate and ferocious domination and multinational enterprises that seek to control and profit from the natural resources of poor countries. Merely reporting such crimes represents action with respect to the effects, and not the real root causes, of the massive violation of human rights; and it is there, at the root, that mercenaries are found, along with the modern security and military assistance and consultancy firms that hire and use them.

46. The Special Rapporteur cannot conceal this belief, since exposing problems is one of the methods which the United Nations should develop more in depth to ensure that human rights are effectively universal for all the world's men and women. Mercenarism occurs in inverse proportion to peace, political stability, respect for the legal and democratic order, the ability to exploit natural resources in a rational manner, a well-integrated population and a fair distribution of development which prevents extreme poverty. When all these positive factors coincide, the risk of mercenary activity is minimal. Conversely, when these factors are not present or occur in haphazard, insufficient, intermittent or contradictory ways, or are countered by destabilizing influences, the likelihood of mercenary intervention increases, either because violence, intolerance and the lust for power create conditions that facilitate instrumental links of some kind with mercenaries; or because third Powers that do not want to be directly involved or to be accused of interventionism resort to such action for their own advantage. While mercenaries may be recruited, trained and financed from within solid, stable countries, they are in fact used chiefly in countries affected by political violence, internal armed conflict, insurrection or insurgency and lacking the necessary financial or technical capacity to exploit their natural resources on an industrial scale.

A. The present situation

47. Today, mercenaries are usually recruited by private companies offering security services and military advice and assistance, in order to take part or even fight in internal or international armed conflicts. Mercenaries are usually, or have been, soldiers, combatants or, more frequently, members of special units and have experience with sophisticated weapons; this applies particularly to those recruited to take part in combat and to train those who are to make up battalions, columns or commando units. The mere fact that it is a Government that recruits mercenaries, or contracts companies that recruit mercenaries, in its own defence or to provide reinforcements in armed conflicts does not make such actions any less illegal or illegitimate. Governments are authorized to operate solely under the Constitution and the international treaties to which they are parties.

48. The view that military units made up of mercenaries or headed or trained by them are supposedly more efficient, that the use of mercenaries helps to preserve the life of young conscripts or that it is cheaper to recruit mercenaries than to maintain a regular army are weak arguments, and legally and ethically questionable. If such arguments were used as the grounds for praxis, States would reach a stage when they would have to abolish their military forces or cut them back drastically and invite mercenary organizations in to take charge of not only the maintenance of law and order, but possibly also border control.

49. The issue of mercenary activity has so many ramifications nowadays that attention must focus on the criterion of foreign nationality, which hitherto has been considered as a means of differentiation and a determining factor in the definition of a mercenary. In fact, a foreign Power can avail itself of nationals of the country it intends to attack in order to do it serious harm. In such a case, the rules of international law as they now stand would not allow the act to be defined as mercenary, even if there was evidence of, for example, recruitment and payment. Even though existing international law may be excessively rigid or full of gaps or does not lend itself to the formal definition of a criminal as a mercenary, it would be wrong to invoke or interpret the existing rules either in too restrictive a manner or in such a way as to justify mercenary acts and behaviour.

50. Without obviating the need to clarify, refine, update and expand the rules of customary international and treaty law to combat mercenary activity, it should be established as a principle that, in essence, the aim of such rules is to condemn mercenary acts in the broad sense of the buying and selling of military services that are not subject to the humanitarian standards that apply to armed conflicts and that are likely to lead to war crimes and human rights violations. It should not be forgotten that, in addition, current international law condemns interference by one State in the internal affairs of another State and the impeding of the self-determination of peoples and that it is, if anything, an aggravating factor if the State interfering employs nationals of the other country for that purpose. Such nationals would not, strictly speaking, be considered mercenaries, but, on the part of those recruiting them, the aim of using them as mercenaries is objectively undeniable, as is the willingness of such nationals to accept a relationship that turns them into mercenaries.

51. The definition does not change if a national group organized abroad for purposes of opposing its country's Government politically and militarily hires and pays mercenaries, based on their military experience or experience in the use of arms and explosives, in order to carry out attacks against the country and its Government. In any case, a distinction must be made between political opposition to a regime, which is the right of any member of a national community, and the employment of methods that are inherently unlawful, such as the use of mercenaries.

B. Current international legislation and its limitations

52. The lack of clear, comprehensive and consistent international legislation prohibiting mercenary activities is one of the chief problems detected in relation to mercenaries. The Special Rapporteur deems it necessary to study the apparent connection between the increase in mercenary activities and the obvious gaps in the international legislation currently in force. Furthermore, the increasing tendency of mercenaries to hide behind modern private companies providing security and military advice and assistance may be due to the fact that international legislation has not taken account of new forms of mercenary activity.

53. Earlier resolutions of the General Assembly recommended that expert meetings should be convened to study the international legislation in force more closely and to propose recommendations for a clearer legal definition. These meetings have not yet been held. The Special Rapporteur recommends that the General Assembly should give priority to the implementation of that recommendation. The United Nations must have new, clear and effective legal proposals for preventing and punishing mercenary activities, particularly in their new forms. Statements formally condemning mercenary activities have not served to prevent an increase in calls on the services of mercenaries and recruiting companies of doubtful lawfulness and legitimacy. What is now needed is an improvement in the normative system to enable it to cope with the development of new criminal methods.

54. The persistence of mercenary activities, the range and variety of the forms in which they are carried out and the hidden networks of complicity behind them suggest that States, particularly the smallest and weakest ones, the least developed, those forming archipelagoes, those with valuable natural resources but fragile political systems and those faced with armed insurrection and internal conflicts, are not adequately protected against mercenarism in its various forms. International legal instruments that characterize mercenary activities negatively do exist, but their configuration and classification leave something to be desired. In other words, they contain gaps, inaccuracies, technical defects and obsolete terms that allow overly broad or ambiguous interpretations to be made. Genuine mercenaries take advantage of these legal imperfections and gaps to avoid being classified as such.

55. Article 47 of the 1977 Protocol I Additional to the Geneva Conventions of 1949 is the only universal international provision in force that contains a definition of mercenaries; paragraph 1 punishes the mercenary by excluding him from the category and rights of combatant or prisoner of war, which amounts to condemning him for his participation, for pay, in armed conflicts; and paragraph 2 then states the definition. The first point to emphasize is that, because of its placement and contents, article 47 of Additional Protocol I does not legislate on mercenary activities, but, rather, limits itself, from the standpoint of international humanitarian law, to providing for the possibility of mercenarism and defining the legal status of the mercenary if he takes part in an armed conflict. As may be seen, the purpose is not to eliminate or proscribe mercenary activities in general, but simply to regulate a specific situation. There is no other existing universal law. Hence the above-mentioned gaps.

56. The International Convention against the Recruitment, Use, Financing and Training of Mercenaries, adopted by the General Assembly on 4 December 1989, has not yet entered into force, although it has been nearly 10 years since its

adoption. Thus far, 19 States have ratified or acceded to it; this means that it requires ratification or accession by only three more States to enter into force. While its provisions contain measures which are a step forward towards the eradication of this reprehensible activity, it should be noted that article 1, paragraph 1, reproduces almost verbatim the text of article 47 of Additional Protocol I on the definition of a mercenary. Added paragraph 2 relates to mercenary violence against the constitutional order or territorial integrity of a State. No progress has therefore been made with regard to a better and simpler definition of the concept of mercenary, which would allow quicker and more direct action to be taken against mercenary activities. In any event, the Special Rapporteur must point out that it would be easier to improve this important instrument if it were to enter into force in the near future.

57. As a result of these legal gaps, most of the mercenaries who fought in wars in the 1990s in the former Yugoslavia, Angola, Georgia, Nagorny Karabakh or the Democratic Republic of the Congo (then Zaire) now live comfortably in their homes, quite unbothered by the justice system, seeking or awaiting new offers to fight. Consequently, the international community is faced with a situation that actually affects it and the time has come for the consideration of the issue by the General Assembly also to include the need to review and update international legislation on mercenary activities.

VI. Private security and military assistance companies and mercenary activities

58. In recent years, the Special Rapporteur has studied in depth the issue of private companies offering security services and military assistance and advice in the international market, and has focused specifically on how some of their activities may conflict with matters reserved for the exclusive competence of States or with the purposes and responsibilities of the United Nations under the Charter, such as respect for the right of peoples to self-determination.

59. The Special Rapporteur's visit to the United Kingdom, where some of these companies are registered, gave him an idea of the interest which government sectors dealing with security and even development issues, as well as non-governmental organizations working on issues related to peace and human rights, have taken in this matter. The visit enabled the Special Rapporteur to improve his understanding of some aspects of the issue, to define its scope and to envision some practical means of arriving at an effective solution to the problems created by these companies.

60. The first finding derived from the information provided and the interviews held during the visit to the United Kingdom is that there is, in fact, an objective concern about the unlimited scope which the activities of private companies working in the area of security and military assistance could attain unless legal regulations are established to distinguish, as clearly as possible, matters of security from military matters which are exclusively within the competence of States and, where applicable, of an international organization such as the United Nations. Such clear and precise regulations are currently lacking in the United Kingdom and in virtually all other countries except South Africa, which, in 1998, passed regulations on military assistance abroad and defined the competence of private companies in that area. Obviously, the aim is not to copy the South African law, but to analyse the need for regulation. Each country must consider the issue in a manner which, while respecting basic principles such as those of free enterprise and the logic of the globalized market, remains compatible with those of safeguarding the self-determination of peoples, the sovereignty of States and respect for human rights.

61. From this standpoint, it is unacceptable to take a liberal attitude that could lead to the formation of private armies, the transfer of military responsibilities concerning the active defence of the sovereign rights of States or the actual privatization of war. In such a situation, the State would be stripped of its obligations to defend peace and protect life, and would be replaced by companies which, as is natural, are ruled by the logic of self-interest and profit-making, which override all other considerations.

62. Rather than ignore the existence of the serious problem posed by these private companies, which take advantage of legal gaps to expand excessively and to encroach on military matters that are solely within the competence of States, it is necessary to expose and discuss the problem publicly and to develop regulations clearly establishing which security and military responsibilities can never be usurped from the State because they are inherent to the State's very existence, distinguishing them from responsibilities in this area that can be transferred or shared. The denunciation of the excesses committed by private companies that have overstepped the limits of their authority in military matters implies only one course of action: informing them that they cannot usurp State responsibilities, and convincing them that they and the State have a common interest in regulating and limiting their activities without going so far as to prohibit their existence.

63. Some military security companies are marketing their services more and more aggressively, pointing to their allegedly greater military efficiency, the lower cost of their operations, their personnel's proven experience or a supposed comparative advantage as factors that would make it desirable for States to hire them, even for peace-building or peacekeeping operations such as those conducted by the United Nations or the Economic Community of West African States (ECOWAS). The Special Rapporteur has read documents prepared by these companies indicating what they would charge for participating in peacekeeping operations, with the difference, according to them, of greater efficiency in breaking up pockets of resistance, extinguishing hardline opposition and opening up avenues for humanitarian assistance. Advertising for these companies and the services and jobs they offer can be found on the Internet and leave no doubt as to what is being offered and the connection with mercenary agents.

64. In contrast, national States are showing no sign of a reaction that focuses on these companies' international expansion and the dangers it entails for State sovereignty and objectives. In his correspondence with Member States, the Special Rapporteur has asked for their opinion on this matter, but the replies received have indicated no particular interest in it. This silence is alarming inasmuch as there are situations in which a country's press reports in abundant detail on the presence of companies involved in matters of national security and public safety without regard for human rights and in open contradiction with constitutional provisions that categorically state that internal order and security are the exclusive responsibility of the State.

65. One point that arose during the Special Rapporteur's visit to the United Kingdom and on which the government officials interviewed agreed with him is that mercenaries recruited by these companies should not be allowed to participate actively in combat in military operations during wartime. Private companies offering security services and military assistance and advice cannot claim to be legitimate if they hire mercenaries to fight in conflicts in other States. Any future law or regulatory mechanism will have to prohibit the hiring and formation of armies of mercenaries.

66. Regardless of the declarations of good intentions and respect for human rights and international humanitarian law made by the directors of these companies, it should be borne in mind that national security and public safety and action to combat rebels, traffickers and terrorists are the responsibility of the State. They are matters related to a State's very existence and *raison d'être*.

67. If Governments accept the formation of private armies of mercenaries and leave matters of security and law and order in their hands, they subordinate themselves to the armed branch of those companies, forsake their peoples and expose them to the risks of private protection that can discriminate among population groups on racial or ideological grounds.

68. The recruitment and hiring of mercenaries is unacceptable even when they are placed at the service of a constitutional or legitimate Government or to restore one to power. The distinction between using mercenaries for good or evil ends is no more admissible than is the distinction between good and bad mercenaries. A State's weakness, a State's impoverishment and disintegration, the breakdown of the constitutional system, internal armed conflicts and anything that might constitute a grave risk for public order and peace must be resolved on the basis of the multilateral security agreements that exist in all regions and on all continents, calling on international cooperation and strengthening all the peace-building and peacekeeping operations which, according to the Charter, are to be carried out by the United Nations.

69. Specifically, it is neither lawful nor advisable, no matter how often short-term or emergency reasons are invoked, to entrust a country's security and the speedy settlement of armed conflicts to private companies which hire mercenaries to achieve those objectives and which earn substantial economic profits for their participation. Consider also that countries facing a situation in which they call on these companies are usually in a poor economic and financial position and lack the funds to pay for their services. They are therefore obliged to do so by granting concessions for resources that are part of the national heritage. The companies are prepared for this highly lucrative eventuality and have set up various branches and subsidiaries.

70. It should be mentioned that some Governments are hiring these companies to settle the military conflicts that are destabilizing them, knowing full well that a mercenary component is included in the offer. Likewise, some international organizations and agencies sign contracts with them for security and logistical support. It is not impossible that some Governments may also resort to this type of company to undertake unilateral action in another country, on the pretext of establishing order or ensuring peace in a given region. All of this is tantamount to mercenary intervention that is officially tolerated even though it is known to affect international principles and to result in human rights violations.

71. In sum, the General Assembly should pay attention to the fact that a kind of privatization of security services and war is being promoted through the unchecked expansion of these private companies. The implications for the exercise of human rights are extremely dangerous. The Special Rapporteur's point of view has already been stated: the international community cannot, without undermining the principles on which its very existence is based, allow the globalized market to function as well for the free and unrestricted sale of military assistance and active peacekeeping and peace-building operations that are the province of international organizations. To do otherwise would mean, in practice, allowing paramilitary forces with a mercenary component to interfere in internal affairs. The Special Rapporteur is, in accordance with his terms of reference, continuing to study this question in depth.

VII. Current status of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries

72. The Special Rapporteur has shown in his previous reports to the General Assembly that the International Convention against the Recruitment, Use, Financing and Training of Mercenaries expands international regulation of the question and confirms the legal nature of the resolutions and declarations of United Nations bodies condemning mercenary activities. Its entry into force will contribute to preventive cooperation among States, better identification of situations involving mercenaries and the clear determination of jurisdiction in each case and will facilitate procedures for the extradition of mercenaries and the effective prosecution and punishment of offenders.

73. Unfortunately, only 19 States have completed the formal process of expressing their willingness to be bound by the International Convention, whereas 22 are required for its entry into force. Those States are: Azerbaijan, Barbados, Belarus, Cameroon, Cyprus, Georgia, Italy, Maldives, Mauritania, Qatar, Saudi Arabia, Senegal, Seychelles, Suriname, Togo, Turkmenistan, Ukraine, Uruguay and Uzbekistan. Nine other States have signed the International Convention, but have not yet ratified it. They are: Angola, Congo, Democratic Republic of the Congo, Germany, Morocco, Nigeria, Poland, Romania and Yugoslavia. Pursuant to article 19, the International Convention is to enter into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General. Since the Convention has still not entered into force nearly 10 years after its adoption, international law on mercenaries continues to be limited to the provisions of article 47 of the 1977 Protocol I Additional to the Geneva Conventions of 1949 and the 1977 OAU Convention on the Elimination of Mercenarism in Africa.

VIII. Conclusions

74. The Special Rapporteur wishes to express his appreciation to the Government of the United Kingdom for its invitation to visit on official mission in January 1999 and for the substantive nature of the talks he was able to have with high-level government officials. He also wishes to extend his thanks to the academic institutions, non-governmental organizations and individuals who kindly received him and offered a useful exchange of opinions. These meetings resulted in a significant concurrence of opinion on the treatment of mercenary activities, on the assessment of situations, and on procedures for better regulation of private companies offering security services and military assistance and advice. The Special Rapporteur would like to stress that the Government of the United Kingdom accords great importance to these issues and is concerned to develop the best possible legal regulation.

75. Mercenary activities continue to be carried on through traditional means of recruitment and have taken on new forms. One of the new developments is the recruitment and hiring of mercenaries by private companies offering security services and military assistance and advice, and their hiring in turn by Governments to provide security, to maintain public order and safety and even to engage in armed combat against rebel forces or organized crime. Such companies promote themselves as multifaceted, versatile, technologically advanced and capable of rapid evolution and adaptation to specific circumstances. They claim a comparative advantage over regular forces in their command, communications, control, computer and intelligence systems.

76. Since the nature of the act and the function of mercenary have not altered, despite changes in forms and operational methods, the General Assembly and other United Nations bodies should continue to condemn mercenary activities and the use of mercenaries. Mercenary activities impede the exercise of the right of peoples to self-determination and jeopardize the sovereignty of States, the principle of non-interference in internal affairs, the stability

of constitutional Governments and the enjoyment of the human rights of the peoples concerned.

77. As the recruitment and hiring of mercenaries has become more businesslike, the number of mercenaries and persons prepared to become mercenaries has increased. The laws of the market appear to govern the demand for mercenaries. They may show up anywhere, under the guise of employees of the multi-service firms that hire them.

78. The Special Rapporteur has observed that, given the current situation, the international rules to deal with and punish mercenary activities are inadequate. The legal gaps and ambiguities he has detected suggest that mercenary activities cannot be successfully combated with existing rules. Moreover, mercenarism is not classified as a separate criminal offence in the criminal law of most States.

79. The emergence of companies offering security services and military assistance and advice and the recourse by such companies to the recruitment and hiring of mercenaries raises serious questions about how to fill the legal gaps that have allowed them to form and to move into areas of activity bordering on the illegal. Some practices of these companies, such as providing security services or military advice, are acceptable under the international system. Others, such as the hiring of mercenaries and active military intervention in armed conflicts, should not be tolerated. Rules regulating and monitoring the activities of these companies would appear to be essential.

80. The legal gaps, defects and ambiguities that currently facilitate mercenary operations by private companies should be remedied through explicit rules that regulate and clearly limit what they may and may not do internationally, while clearly defining the responsibility for human rights violations and abuses and other crimes and offences of the companies, the States that hire them and the individuals they recruit.

81. Africa remains the continent where mercenaries are most active. Mercenaries are involved in conflicts in Angola, the Republic of the Congo, Sierra Leone and the Democratic Republic of the Congo. Chronic political instability, combined with a wealth of natural resources coveted by outsiders, gives rise to many armed conflicts, which sooner or later attract mercenaries.

82. The Special Rapporteur hopes that the peace accord concluded on 7 July 1999 in Lomé between the Government of Sierra Leone and the Revolutionary United Front (RUF) can bring an end to the tragic events in that country, although he contests the legitimacy of the amnesty, which offers impunity to individuals who have committed egregious violations of human rights and international humanitarian law. The example of Sierra Leone demonstrates that recourse to security and military assistance and advisory firms is no substitute for a strong collective regional security system, as exemplified by the Military Observer Group of the Economic Community of West African States. There is a need to reinforce the mandate and involvement of the United Nations and regional organizations such as the Organization of African Unity (OAU) in peace-building and peacekeeping operations.

83. Despite the United Nations embargo, the União Nacional para a Independência Total de Angola (UNITA) continues to procure arms and the services of mercenaries. UNITA is estimated to have raised from $3 billion to $4 billion by exporting diamonds from the areas it controls, and this enables it to recruit mercenaries and acquire sophisticated weapons. Large Western firms continue to profit from the business at the cost of the right of the Angolan people to self-determination and the enjoyment of their most basic rights.

84. The Special Rapporteur feels that the presence of Angolan, Chadian and French mercenaries in the Republic of the Congo and the many dead, injured and displaced persons and refugees resulting from the conflict there are matters of particular concern. The desire to control Congolese oil has been one of the motives behind the conflict. Equally worrisome is the presence of mercenaries in the Democratic Republic of the Congo, where the conflict has involved troops from five other African States.

85. Nearly 10 years have passed since the General Assembly adopted the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, yet only 19 States have so far agreed to be bound by it. In order for the Convention to enter into force, 22 States must ratify or accede to it. The delay leaves the door open to the spread of criminal activity by mercenaries.

IX. Recommendations

86. Privatization of control of public order and security, through the hiring of private companies for security and military assistance and advice, and the growing tendency of such companies to hire mercenaries constitute a threat to the international human rights protection system, and the General Assembly should take a stand against the practice. It should be borne in mind that the entire system now in place for protecting and promoting human rights is based on the premise that it is States that take responsibility for maintaining public order and security through their armed

forces and police and hence may on occasion violate human rights.

87. Accordingly, the General Assembly should reaffirm its explicit condemnation of mercenary activities, regardless of the form they take, and request the States Members of the United Nations to classify mercenarism as a crime in their internal criminal law and to make acting as a mercenary an aggravating circumstance in other crimes, especially acts of terrorism.

88. The General Assembly should once again recommend to all States Members that they should explicitly prohibit the use of their territory for recruitment, training, assembly, transit, financing and use of mercenaries.

89. Given the legal gaps and ambiguities that currently facilitate the use of mercenaries and the increase in their numbers, the General Assembly should invite the Member States to ratify or accede to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries. Only three more States are needed in order for the Convention to take effect.

90. In addition, the General Assembly should remind the Office of the High Commissioner for Human Rights of the provisions of its earlier resolution asking the Office to publicize the adverse effects of the activities of mercenaries on the enjoyment of human rights and the exercise of the right of peoples to self-determination, through the publication of a number in its series of booklets. The Office of the High Commissioner for Human Rights should also, when requested, render advisory services to States that are affected by the activities of mercenaries and organize meetings of experts who may help clarify the issue of private security and military assistance companies.

91. The General Assembly should remind all States and international organizations of the need to remain vigilant and to prohibit the hiring of mercenaries by private security companies, particularly by those that offer military assistance and advice on the global market.

92. The General Assembly should also bear in mind that mercenaries offer as comparative advantages their greater efficiency and the fact that they can act without regarding themselves as being bound to respect human rights or the rules of international humanitarian law. These circumstances make the act of recruiting and hiring mercenaries that much more blameworthy, since the hiring party knows from the start that mercenaries show a disregard for human dignity and make a supposed virtue out of cruelty. The participation of mercenaries in armed conflicts and in any other situation in which their services are unlawful impedes the enjoyment of human rights by those on whom their presence is inflicted.

Annex I

Schedule for official portion of visit to the United Kingdom of Great Britain and Northern Ireland

Tuesday, 26 January 1999

9.30 a.m.	Mr. Tony Lloyd Minister of State for Foreign and Commonwealth Affairs
10.15 a.m.	Mr. Tony Brenton Director for Global Issues
	Ms. Rosalind Marsden Head, United Nations Department, Foreign and Commonwealth Office
11 a.m.	Mr. James Bevan Head, African Department (Equatorial), Foreign and Commonwealth Office
11.45 a.m.	Mr. Ron Nash Head, Human Rights Policy Department, Foreign and Commonwealth Office
12.30 p.m.	Mr. Paul Hare Head, Non-Proliferation Department, Foreign and Commonwealth Office

Wednesday, 27 January 1999

10 a.m.	Mr. Donald Anderson, Chairman
	Mr. Ted Rowlands Foreign Affairs Select Committee House of Commons
11 a.m.	Round-table discussion with high-level officials from the Home Office

Thursday, 28 January 1999

11.30 a.m.	Mr. Buckley Assistant Under-Secretary, Ministry of Defence

Friday, 29 January 1999

9 a.m.	Round-table discussion with high-level officials from the Department for International Development, including Ms. Sarah Beeching, Head, Policy Section, Conflict and Humanitarian Affairs Department, Department for International Development
12 noon	Lunch offered by Mr. Tony Brenton, with high-level officials of the Government of the United Kingdom and representatives of non-governmental organizations

Annex II

Schedule for non-official portion of visit

Monday, 25 January 1999

5 p.m. Mr. Ahmad Fawzi
Director, United Nations Information Centre, and local coordinator for the visit of the Special Rapporteur

Tuesday, 26 January 1999

2.30 p.m. Mr. Michael Crowley
Amnesty International, United Kingdom Section

5 p.m. Mr. George Joffe
Deputy Director/Director of Studies

Mr. William Hopkinson
Head, International Security Programme

Mr. Martin Plaut
Associate Fellow (Africa)
The Royal Institute of International Affairs at Chatham House

Wednesday, 27 January 1999

9 a.m. Mr. Chris Rickley
Campaign Against Arms Trade

4 p.m. Mr. Kevin P. Clements
General Secretary, International Alert

Thursday, 28 January 1999

3 p.m. Mr. K. A. O'Brien
Academic researcher

5 p.m. Round-table discussion
Centre for Defence Studies
King's College